

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry ) reconsideration decision dated February 5, 2016 which held that the appellant is not eligible for income assistance pursuant to Employment and Assistance Act (EAA) Section 9(1)(b) as she did not comply with the conditions of her employment plan (EP) because she failed to demonstrate reasonable efforts to participate in the program pursuant to Section 9(4)(a) and did not provide any medical reason to substantiate that she is unable to participate in the program pursuant to Section 9(4)(b) of the EAA.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9.

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

### **The evidence before the ministry at the time of reconsideration included:**

A Medical Report-Employability dated November 20, 2012; which indicated that the appellant should abstain from work for a period of 12-18 months due to her medical condition(s);  
A MSD Funding Verification form seeking confirmation of funding for admission to a recovery program signed by the appellant and dated April 7, 2014;  
A ministry Employment Plan (EP) signed by the appellant and dated February 19, 2015; and  
The appellant's Request For Reconsideration dated January 31, 2016.

In the Request for Reconsideration the appellant acknowledged that she had missed appointments that she had agreed to attend in her Employment Plan for 2015. The appellant stated that her reason for missing so many appointments was due to transportation and anxiety issues. She stated that she is working on these issues and hopes to be reconsidered for income assistance. She indicated that she has made an appointment for February 10, 2016 in order to start over for 2016. She further stated that she was aware that her taxi to and from appointments will be paid.

On February 19, 2015, the appellant entered into an EP with conditions as follows:

Participate fully and to the best of the appellant's ability in the activities required by the ministry or contractor as set out;

- Meet with the employment contractor on or before January 28, 2015,
- Participate in EP program activities as agreed to with the contractor,
- Complete all tasks assigned including any actions set out in your action plan,
- Notify contractor if unable to take part in services or complete steps that were agreed to,
- or when work is found,
- Notify contractor if you move, and within one week ask the contractor serving your new area to transfer your case file, and
- Report as required and in a method that is determined by the contractor.

By signing her EP, the appellant acknowledged that;

- It is a condition of eligibility for income assistance,
- She must comply with the conditions as set out in this plan including any condition to participate in a specific employment - related program,
- The contractors have the ability to report back on the appellant's activities,
- She may be required to provide verification of her compliance with the condition of this plan, including proof of active work search and/or records of attendance and participation in an employment-related program as required by the ministry, and
- She understands that if she fails to comply with the conditions of her EP, she will be ineligible for assistance under the Act.

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In the Notice of Appeal dated February 25, 2016, the appellant indicates that she suffers from anxiety and depression; however, she is continuing to look for employment and has been attending meetings with the EP contractor.

The ministry stood by their reconsideration decision.

### **Findings of Fact**

The appellant receives income assistance as a single person.

On November 7, 2012, the appellant signed an Activities Towards Independence EP.

On January 9, 2015, the ministry placed a hold on the appellant's March cheque and mailed her an EP for completion.

On February 25, 2015 the appellant submitted her signed EP in which she had agreed to attend an intake appointment on January 23, 2015 and to participate regularly as directed by the contractor. The appellant then advised that she had been to the contractor and that she had an appointment the following week and had also registered in a resume writing course. The appellant stated that she understood the conditions of her EP; her March cheque was then released to her.

On May 5, 2015, the appellant attended the ministry office looking for her cheque and was advised that it was held for an EP. The appellant signed the second copy of her EP and received her cheque.

On June 4, 2015, the ministry noted that the appellant's appointment scheduled for April 29 was re-booked for May 5 and then re-booked again for May 20, 2015 and then missed. It was noted that the last time the appellant attended the EP office was April 15, 2015.

On June 23, 2015, when the appellant spoke with a ministry worker, she was advised that she needed a card from the contractor confirming her next appointment and was reminded that compliance was mandatory and that she was required to attend her EP appointments no matter how far out of town she lived.

On June 30, 2015 the appellant submitted confirmation that she had an appointment on July 15 and her cheque was released.

On September 9, 2015, the appellant's case was closed due to non-participation.

On January 11, 2016, the contractor reported that the case manager had closed the appellant's file due to persistent lack of program participation. The case manager had stated that the appellant had a history of not following through with accessing job search supports despite given numerous opportunities to engage in case management services and make a labour market attachment. Further stated was that the appellant could not be counted on to attend appointments or workshops as agreed to and that her file was closed on August 31, 2015 due to ongoing program non-compliance. Included were the following examples;  
Appointment booked for March 18 - no-show, rebooked for April 15 - attended.

Follow-Up appointment booked May 5 – cancelled, rebooked for May 20, - no-show.  
Attended appointment June 15 when appellant agreed to attend workshops June 28, 29 & 30 – did not attend on June 28.  
Booked appointment for August 5, - no show.

On January 22, 2016 the appellant told the ministry that she had attended a couple of appointments and missed all workshops because of having medical appointments. The appellant admitted that she did not advise the contractor that she would be absent for her EP appointments and that she did not re-schedule them. The appellant indicated that transportation was an issue but also acknowledged that she had been advised that transportation was not an acceptable reason for missing appointments. The appellant was then denied further assistance for non-compliance with her EP.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant is not eligible for income assistance as she did not comply with the conditions of her employment plan because she failed to demonstrate reasonable efforts to participate in the program and did not provide any medical reason to substantiate that she is unable to participate in the program pursuant to Section 9 of the EAA.

### Relevant Legislation

9. (1) For a family unit to be eligible for income assistance or hardship assistance, each applicant or recipient in the family unit, when required to do so by the minister, must (a) enter into an employment plan, and (b) comply with the conditions in the employment plan.
- (2) A dependent youth, when required to do so by the minister, must (a) enter into an employment plan, and (b) comply with the conditions in the employment plan.
- (3) The minister may specify the conditions in an employment plan including, without limitation, a condition requiring the applicant, recipient or dependent youth to participate in a specific employment-related program that, in the minister's opinion, will assist the applicant, recipient or dependent youth to (a) find employment, or (b) become more employable.
- (4) If an employment plan includes a condition requiring an applicant, a recipient or a dependent youth to participate in a specific employment-related program, that condition is not met if the person (a) fails to demonstrate reasonable efforts to participate in the program, or (b) ceases, except for medical reasons, to participate in the program.
- (5) If a dependent youth fails to comply with subsection (2), the minister may reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.
- (6) The minister may amend, suspend or cancel an employment plan.
- (7) A decision under this section (a) requiring a person to enter into an employment plan, (b) amending, suspending or canceling an employment plan, or (c) specifying the conditions of an employment plan is final and conclusive and is not open to review by a court on any ground or to appeal under section 17 (3) [reconsideration and appeal rights].

### Ministry Position

Based on the appeal record, the ministry maintains that having signed the EP, the appellant read, understood and agreed to the conditions specified in the plan. The ministry determined that the appellant did not attend all the appointments and workshops with the contractor and did not notify the contractor each time she was unable to attend.

The ministry notes that the appellant indicated that she has transportation and anxiety issues. The ministry states that notes on the appellant's file indicate that she had advised that she has a bicycle that she will use to commute back and forth to appointments. Concerning the appellant's statement that she was experiencing anxiety during the time in which she was expected to attend the EP office, the appellant did not indicate to her case manager or the ministry worker that this was a struggle for her and has not provided any confirmation of this from a physician. Other than what is noted on the Medical Report- Employability form dated November 20, 2012 which stated that the appellant had a major Depressive Disorder that was expected to last 12-18 months; the ministry could not find any confirmation of this medical condition on the appellant's file.

The ministry also notes that the appellant had booked an appointment on February 10, 2016 with the EP contractor; however, given her history of booking appointments and subsequently not attending those appointments, the ministry determined that this is not indicative of a reasonable effort to

participate in the EP.

The ministry's position is that the conditions of the appellant's EP were reasonable and over the course of 11 months, she was given numerous opportunities to comply. As the appellant has missed appointments, failed to make contact with the contractor and has not followed through with the EP program, the minister finds that she has not complied with the conditions of her EP; therefore, she not eligible for income assistance under the legislation.

### **Appellant Position**

The appellant's position is that she had attended a couple of appointments and missed all workshops because of having medical appointments. The appellant indicated that transportation was an issue but also acknowledged that she had been advised that transportation was not an acceptable reason for missing appointments. Although the appellant argues that she could have ridden her bike in to town to attend appointments, she did not because she was "sort of dealing with anxiety" and that she would rather wait until someone called instead of attending scheduled appointments.

### **Panel's Findings**

In determining the reasonableness of the ministry's decision, the panel finds that the appellant entered into an EP on February 25, 2015 which required her to participate fully and to the best of the her ability in the activities required by the contractor. The appellant admits that she was not compliant as she did not attend all the appointments and workshops scheduled with the contractor and that she did not notify the contractor each time she was unable to attend.

By signing the EP, the appellant acknowledged that she understood the conditions as set out and agreed to them. The panel finds that she was also aware of the consequences of not complying with the conditions of her EP. There is no evidence that she was unable to comply due to medical reasons. Therefore, the panel finds that the ministry reasonably determined that the appellant was ineligible for income assistance because she did not comply with the conditions of her EP as required by EAA Section 9(1)(b) by failing, without medical reason, to make a reasonable effort to participate in her employment program pursuant to Section 9(4).

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.